

Message Text

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ORIGIN L-03

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TO AMEMBASSY LONDON IMMEDIATE

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E.O. 11652: N/A

TAGS: EAIR, UK

SUBJECT: CIVAIR: US-UK CHARTER AGREEMENT

1. EMBASSY REQUESTED CONVEY FOLLOWING COMMENTS TO
DEPARTMENT OF TRADE AND DENZA OF FOROFF ASAP ON APRIL 3.

2. US IS PREPARED TO ACCEPT THE AMENDMENTS SUGGESTED BY
THE UNITED KINGDOM IN THEIR RECENT MESSAGE FROM THEIR
WASHINGTON EMBASSY, WITH THE FOLLOWING EXCEPTIONS OR
MODIFICATIONS:

-- A. WITH RESPECT TO THE PROPOSED REVISION OF PARAGRAPH
(1)(D)(III) OF ANNEX 4, CERTAIN WORDS MAY HAVE BEEN
INADVERTENTLY OMITTED FROM THE UK REDRAFT. WE PROPOSE THAT
THE PARAGRAPH READ AS FOLLOWS:

-- "ON FLIGHTS WHERE ADVANCE LISTED AND NON-ADVANCE
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LISTED CHARTER CATEGORIES ARE COMMINGLED, RECEIPT OF A
LIST OF THE PASSENGERS OF NON-ADVANCE LISTED CHARTER
CATEGORIES MAY BE REQUIRED BY THE AERONAUTICAL AUTHORITIES
OF THE OTHER CONTRACTING PARTY FIVE DAYS PRIOR TO THE DAY
ON WHICH THE ORIGINATING FLIGHT IS SCHEDULED TO LAND."

-- B. WITH RESPECT TO THE PROPOSED DELETION OF

PARAGRAPH 2 OF ANNEX 4 (CARGO CHARTERS), WE ARE DIS-APPOINTED BY THE MANNER IN WHICH THIS IS BEING HANDLED. THE US PROPOSED LANGUAGE ON CARGO CHARTERS IN EARLY FEBRUARY, AND WE HAVE YET TO HAVE ANY SUBSTANTIVE RESPONSE FROM THE UK. THE ORIGINAL ANNEX 4 OF BERMUDA II COMMITTED BOTH PARTIES TO WORK FOR INCLUSION OF "ALL-CARGO CHARTER ARRANGEMENTS" IN THE BILATERAL TARGETED FOR MARCH 31. FURTHER, OUR MARCH 17 MEMORANDUM OF CONSULTATION CONTEMPLATED PROMPT CONSULTATIONS BETWEEN THE US AND UK IF THE BRACKETED LANGUAGE WAS UNSATISFACTORY, SO THAT THERE WOULD BE THE POSSIBILITY OF REVISIONS IN TIME FOR A CARGO PROVISION TO BE INCLUDED IMMEDIATELY IN THE ANNEX. US OFFERED TO MEET IN LONDON ON THIS SUBJECT DURING THE WEEK OF MARCH 20, BUT THE OFFER WAS REFUSED. NOW WE ARE INFORMED THAT THE US PROPOSAL IS NOT ACCEPTABLE, BUT NO REASONS ARE GIVEN. WE REQUEST THAT, PURSUANT TO THE MEMORANDUM OF CONSULTATIONS, THE UK STATE THAT REASON OR REASONS FOR ITS OBJECTION TO OUR PROPOSAL, AND INDICATE ITS PROPOSAL ON THE SUBJECT, AS WELL AS DATES FOR CONSULTATIONS.

3. IN ADDITION TO YOUR PROPOSED CHANGES, WE RECOMMEND THE FOLLOWING MODIFICATIONS OF THE AD REFERENDUM AGREEMENT, TO CORRECT ERRORS OR OMISSIONS OCCASIONED BY LAST-MINUTE DRAFTING CHANGES.

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-- A. WITH RESPECT TO PARAGRAPH (7) OF ARTICLE 14, THERE IS OBVIOUS CONFUSION CONCERNING THE RELATIONSHIP OF SUB-PARAGRAPH (C) AND SUBPARAGRAPH (D). THE TWO PROVISIONS APPEAR TO BE INCONSISTENT IN THE CASE OF A FLIGHT ORIGINATING IN THE OTHER PARTY'S COUNTRY, UNLESS THE PHRASE "CHARTER PROGRAMS" IN (C) IS CONSTRUED AS REFERRING ONLY TO THE INFORMATION AUTHORIZED BY (D). YOU WILL RECALL THAT (D) WAS CAREFULLY NEGOTIATED AT PLENARY SESSIONS AS GOVERNING WHAT INFORMATION A NON-ORIGINATING COUNTRY COULD DEMAND. (ITS REFERENCE TO ANNEX 4 INCORPORATES THE REQUIREMENT OF ADVANCE LISTS.) PARAGRAPH (C) WAS ADDED AT A LATE SESSION OF THE LAWYERS' DRAFTING GROUP, WITHOUT PLENARY DISCUSSION. THE PRESENT INCONSISTENCY AND CONFUSION CAN BE RESOLVED BY DELETION OF PARAGRAPH (C) WITH APPROPRIATE RE-LETTERING OF THE OTHER SUBPARAGRAPHS), BY THE ADDITION OF THE PHRASE (SEPARATED BY COMMAS) "PURSUANT TO PARAGRAPH (6) OF THIS ARTICLE" AFTER THE WORD "DETERMINE" IN SUBPARAGRAPH (B), AND BY THE ADDITION TO THE END OF SUBPARAGRAPH (B) OF THE PHRASE "OR SUCH CHARTERWORTHINESS REQUIREMENTS AS ANNEX 4 MAY CONTAIN." SUBPARAGRAPH (B) WOULD THEN READ:

-- "(B) A CHARTER-DESIGNATED AIRLINE OF ONE CONTRACTING

PARTY PROPOSING TO CARRY PASSENGER CHARTER TRAFFIC ORIGINATING IN THE COUNTRY OF THE OTHER CONTRACTING PARTY MAY BE REQUIRED BY THE OTHER CONTRACTING PARTY TO FILE CHARTER PROGRAMS IN ADVANCE, SO THAT THE OTHER CONTRACTING PARTY MAY DETERMINE, PURSUANT TO PARAGRAPH (6) OF THIS ARTICLE, WHETHER THE PROGRAMS MEET ITS CHARTERWORTHINESS RULES OR SUCH CHARTERWORTHINESS REQUIREMENTS AS ANNEX 4 MAY CONTAIN."

B. IN ARTICLE 14, PAGE 5, SUBPARAGRAPH (III), THE NUMERAL 7 SHOULD BE INCORPORATED WITHIN PARENTHESES (I.E., BRACKETS) SO AS TO READ: "(7)". THE PURPOSE OF UNCLASSIFIED

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THIS AMENDMENT IS TO CONFORM REFERENCES TO PARAGRAPH NUMBERS.

C. IN ANNEX 4, PAGE 3, SUBPARAGRAPH (II), THE LAST TWO SENTENCES OF THAT SUBPARAGRAPH SHOULD BE AMENDED TO READ:

-- "EXCEPT FOR TOUR PACKAGES WHICH INCLUDE SLEEPING ACCOMMODATIONS AT THREE OR MORE PLACES NO LESS THAN 50 MILES FROM EACH OTHER, ALL PASSENGERS SHALL BE NAMED ON AN ADVANCE LIST AT LEAST 15 DAYS BEFORE THE PLANNED DATE OF FLIGHT DEPARTURE, PROVIDED THAT IN EACH GROUP CONTRACTED FOR, TWO SEATS MAY BE OCCUPIED BY PASSENGERS WHO ARE SUBSTITUTED FOR PERSONS ON THE ADVANCE LIST UP TO THE FIVE DAYS IMMEDIATELY PRECEDING FLIGHT DEPARTURE. EXCEPT FOR TOUR PACKAGES WHICH INCLUDE AN ACADEMIC COURSE OF AT LEAST FOUR WEEKS' DURATION, ALL PASSENGERS SHALL BE SOLD A RETURN (ROUNDTRIP) CHARTER JOURNEY, THE MINIMUM DURATION OF WHICH SHALL BE SEVEN DAYS COUNTING THE DAY ON WHICH THE ORIGINATING FLIGHT IS SCHEDULED TO TAKE OFF AND THE DAY ON WHICH THE RETURNING FLIGHT IS SCHEDULED TO LAND."

-- AS REVISED, THESE SENTENCES CONTAIN THREE CHANGES. FIRST, AN INTRODUCTORY EXCEPTIONS CLAUSE IS ADDED TO THE FIRST SENTENCE IN ORDER TO CONTINUE THE TREATMENT OF ITC'S PROVIDED IN THE CURRENT MEMORANDUM OF UNDERSTANDING. UNDER THE PRESENT MOU, THERE IS NO CUT-OFF DATE ON THE SALE OF TICKETS TO SUCH PASSENGERS UNLESS COMMINGLED WITH ANOTHER CHARTER TYPE (IN WHICH CASE THE FIVE-DAY CUT-OFF IS APPLICABLE). WE BELIEVE THAT THE TWO SIDES DID NOT INTEND TO PROVIDE MORE RESTRICTIVE TREATMENT OF ITC'S IN THE ANNEX THAN PROVIDED IN THE MEMORANDUM OF UNDERSTANDING. RATHER, WE BELIEVE THE FAILURE TO EXEMPT ITC'S UNCLASSIFIED

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FROM THE OTHERWISE-APPLICABLE 15-DAY ADVANCE LIST REQUIREMENT WAS AN OVERSIGHT WHICH THE SUGGESTED AMENDMENT WILL REMEDY.

-- SECOND, THE LANGUAGE CONCERNING SUBSTITUTION IN THE FIRST SENTENCE IS REDRAFTED TO ELIMINATE SUPERFLUOUS AND CUMBERSOME LANGUAGE.

-- THIRD, AN INTRODUCTORY EXCEPTIONS CLAUSE IS ADDED TO THE SECOND SENTENCE IN ORDER TO CONTINUE THE TREATMENT OF STUDY GROUP CHARTERS PROVIDED IN THE CURRENT MEMORANDUM OF UNDERSTANDING. UNLESS STUDY GROUP CHARTER PASSENGERS ARE PERMITTED TO OBTAIN ONE-WAY TICKETS, THEY MAY NOT BE ABLE TO PURSUE INDEPENDENT TRAVEL WHILE ABROAD. THE MEMORANDUM OF UNDERSTANDING PROVIDES THIS OPTION BY AUTHORIZING ONE-WAY STUDY GROUP CHARTERS AND WE BELIEVE THAT THE TWO SIDES INTENDED TO PRESERVE THIS LIBERAL PRACTICE. COOPER

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